Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of	)	
Implementation of the Local	)	CC Docket No. 96-98
Competition Provisions in the	)	
Telecommunications Act of 1996	)	
	)	
Interconnection Between Local	)	CC Docket No. 95-185
Exchange Carriers and Commercial	)	
Mobile Radio Service Providers	)	

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OPPOSITION AND COMMENTS OF GTE

GTE SERVICE CORPORATION,
on behalf of its affiliated
domestic telephone companies

Gail L. Polivy
1850 M Street, N.W.
Suite 1200
Washington, D.C. 20036
(202) 463-5214

R. Michael Senkowski
Jeffrey S. Linder
Gregory J. Vogt
WILEY, REIN & FIELDING
1776 K Street, N.W.
Washington, D.C. 20006
(202) 429-7000

Its Attorneys

October 31, 1996

TABLE OF CONTENTS

Page

Appendix A	J. Shifman & R. Choura, "Universal Service Existing Proxy Models: What Can They Be Used For?" (submitted to Biennial Regulatory Information Conference at NRRI, September 1996).
Appendix B	Testimony of Robert E. Mercer, Hatfield & Associates, Deposition, Docket Nos. 16300 & 16355, Tr. (Texas Pub. Util. Comm., October 24, 1996).
Appendix C	Testimony of Don J. Wood, Consultant for MCI, Deposition, Docket Nos. 960847-TP & 960980-TP, Tr. (Florida Pub. Serv. Comm., September 13, 1996).
Appendix D	Testimony of Daniel Kelley, Hatfield & Associates, Docket No. 96-0329, Tr. (Hawaii Pub. Util. Comm., October 17, 1996).
Appendix E	Testimony of Robert E. Mercer, Hatfield & Associates, Application No. 96-08-04, Tr. (California Pub. Util. Comm., September 25, 1996).
Appendix F	Revised Proposed Decision, R.95-01-020, I. 95-01-021 (ALJ Wong, California Pub. Util. Comm., mailed October 9, 1996).

SUMMARY

The Telecommunications Act of 1996 ("1996 Act") reflects a strong Congressional commitment to competition and deregulation in the local exchange marketplace. The hallmark feature of this framework for the future is its reliance upon individualized negotiations and arbitrations conducted on a state-by-state basis. However, in order to ensure that the transition to competition envisioned by Congress occurs on a timely and equitable basis, the 1996 Act establishes deadlines, standards and safeguards for this process.

In seeking and obtaining a partial stay of the *First Interconnection Order*, GTE was not attempting to delay local competition, but rather to insure that local competition develops as Congress intended. Indeed, consistent with the requirements of the 1996 Act, by years' end GTE telephone companies will have concluded over 19 negotiated, and 36 arbitration proceedings will be in their final phases. Petitioners AT&T and MCI will be included among those entering the marketplace pursuant to state-approved agreements.

As reflected in GTE's motion for stay of the *First Interconnection Order*, there were three fundamental flaws in the Commission's initial efforts to fulfill its implementation responsibilities under the 1996 Act. First, the Commission assumed that detailed national pricing standards are necessary even though the very existence of federally prescribed standards would remove all incentives for individualized negotiations in favor of stultifying uniformity. Second, the Commission assumed that

Section 251 empowers the agency to preempt state regulatory authority over intrastate interconnection rates without regard to the reservation of such authority to the states under Sections 2(b) and 252 of the Communications Act. Third, the Commission assumed that pricing principles need not provide assurances that incumbent local exchange carriers will recover all of their actual costs of providing access to the new entrants despite the express pricing standards of the 1996 Act and clear constitutional requirements to the contrary.

The Eighth Circuit's stay of the *First Interconnection Order* suggests that the Commission's assumptions will not survive judicial review. Nonetheless, a number of petitioners led by AT&T and MCI now encourage the Commission to plunge even further down the path of national rules and erect added barriers to recovery of ILECs' costs. Indeed, these petitioners ask the Commission to revisit pricing proposals that were previously rejected in the *First Interconnection Order*. Rather than promoting deregulation and competition, these parties would erect new regulatory barriers to competition and further remove incentives for investment, all in the interest of their own profits, not the public interest. Nothing in their petitions warrants renewed Commission consideration of their requests, and the Eighth Circuit's stay order should certainly serve to caution against further federal preemption of state pricing prerogatives.

Aside from these obvious reasons for refusing the requested reconsideration actions, GTE has documented below that the relief sought is often at odds with the petitioners' own statements in ongoing state proceedings and consistently at variance with the facts, the law and sound public policy. Specifically, the major proposals of AT&T, MCI and the CLECs should be rejected for the following additional reasons:

- Hatfield Model. Despite admissions of serious flaws in the model's assumptions, MCI stands alone in its persistent advocacy of national pricing standards based upon the Hatfield Model. In large measure, the model is a Black Box in which algorithms are cloaked from public disclosure and analysis. The only thing certain about the Hatfield Model is that its outputs most assuredly do not permit ILEC recovery of costs, whether historical or forward looking.

- Non-recurring Versus Recurring Charges. AT&T and MCI now seek to rewrite the Commission's pricing rules to require ILECs to finance construction of facilities and unbundling of network elements done for the new entrant's benefit. Specifically, they argue that non-recurring charges cannot be assessed by ILECs to recoup costs of meeting their interconnection requests. Their claims, of course, ignore Commission precedents to the contrary and effectively ask ILECs to underwrite the costs and risks of their entry into the local exchange marketplace.

- Operational Support System (OSS) Costs. AT&T seeks to allocate OSS costs to other network elements. This is obviously inconsistent with basic tenets of cost-based pricing and the 1996 Act's requirements. There is no rational reason to misallocate such costs to other users or to cap arbitrarily OSS charges at levels below their costs.

- Wholesale Rates for Resold Services. MCI would now like the Commission to prescribe arbitrarily default proxies for each individual ILEC. The proxies themselves are unrelated to ILEC costs (individual or industry averaged), and efforts to define individual ILEC costs would be an utter waste of time given ongoing state proceedings in which individual ILEC cost studies are already being reviewed. Accordingly, further expenditure of resources on interim proxies is unwarranted.

- Transport and Termination Rates. Petitioners seek to cap transport and termination rates by excluding all joint and common costs as well as precluding ILECs from earning a profit. A reasonable portion of joint and common costs and profit are clearly additional costs for which ILECs should be compensated.

AT&T, MCI and other CLECs also ask the Commission to create several additional unbundled network elements. These requests were already considered and properly rejected for the following reasons: (1) sub-loop unbundling is not generally technically feasible; (2) unmediated access to AIN triggers would cause harm to other network services; and, (3) dark fiber does not qualify as a network element because it is not "used" in the provision of local exchange services.

With respect to the 1996 Act's resale provisions, several petitioners wish to revisit the *First Interconnection Order's* treatment of promotional offerings; geographic and premises restrictions in retail offerings; and, policies permitting withdrawal of existing services. None of these requests has any merit. First, promotional offerings of less than 90 days are not "retail offerings" triggering the 1996 Act's wholesale requirements. Second, geographic and premises limitations in retail offerings are not presumptively unlawful, and resellers must take retail services as they find them. Third, ILECs must be permitted to withdraw retail services when necessary to adapt to competitive changes and challenges in the marketplace, including, but not limited to fundamental changes in local pricing of services flowing from competitive entry.

The FCC should not modify its ruling that remote switch modules need not be collocated at LEC central offices. This equipment is not used for interconnection or gaining access to unbundled network elements and hence does not qualify for collocation under the statute.

In contrast to the foregoing, several petitions filed by utilities highlight another area where the *First Interconnection Order's* drive toward national standards and expansive privileges for new entrants is inconsistent with the 1996 Act. The utility petitioners demonstrate that the Commission's rules governing access to poles, ducts, conduits and rights-of-way are inconsistent with Section 224 as well as the underlying congressional intent. Accordingly, GTE supports these requests for changes in the *First Interconnection Order's* rules as necessary and proper. Finally, GTE supports Kalida Telephone Company's petition on paging compensation issues.

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OPPOSITION AND COMMENTS OF GTE

GTE Service Corporation ("GTE"), on behalf of its affiliated domestic telephone operating companies, hereby respectfully submits its opposition and comments concerning petitions for reconsideration of the Commission's *First Interconnection Order* in the above-captioned proceeding.[1] As detailed below, GTE urges the Commission summarily to reject petitions filed by AT&T, MCI and others that advocate further forays by the FCC into the pricing of incumbent local exchange carriers ("ILEC") network elements, facilities and services. The Commission has already rejected these proposals and the recent stay order of the U.S. Court of Appeals underscores the questionable legal grounds upon which the renewed requests are premised.[2] Similarly, the Commission should reject petitions for reconsideration that

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[1] Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, *First Report and Order*, CC Docket No. 96-98 (released August 8, 1996) ("*First Interconnection Order*").

[2] Iowa Utilities Board v. FCC, No. 96-3321, slip op. (8th Cir., October 15, 1996) ("*Iowa Stay*").

seek the unbundling of additional network elements and the adoption of even more expansive rights for resellers of ILEC services as unjustified and improper. Finally, GTE notes that petitions filed by utility industry representatives should be viewed favorably because they will serve to align the Commission's rules governing access to poles, conduits, ducts and rights-of-ways more closely with the express provisions of Section 224 and the underlying congressional intent.

I. INTRODUCTION

A. The 1996 Act, the *First Interconnection Order* and the Recent Court Stay Order Provide the Backdrop Against Which the Pending Petitions for Reconsideration Must Be Assessed.

The Telecommunications Act of 1996 ("1996 Act") establishes a new framework for the future in which open entry and competition will replace monopoly provision of local exchange services and artificial constraints on competition for a variety of telecommunications services.[3] The hallmark characteristic of this new regime is its reliance upon negotiated or arbitrated agreements between new entrants and incumbent local exchange carriers ("ILECs").[4] The 1996 Act contemplates individualized negotiations at the local level that are subject to ultimate state public utility commission review, arbitration and approval.[5] While the FCC is entrusted with certain specific

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[3] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).

[4] Joint Explanatory Statement of Conference Committee, S. Conf. Rep. No. 104-458, 104th Cong., 1st Sess., at 1 (1996) ("Conf. Rep.").

[5] 47 U.S.C. § 252.

tasks in implementing the 1996 Act, none of them are intended or designed to preempt this reliance upon private outcomes and state regulatory oversight.

The *First Interconnection Order*, however, embarked upon a direction that inherently runs against the grain of the 1996 Act and its objectives. Instead of trusting private negotiations and state regulatory oversight, the Order opts for detailed national rules in order to enforce uniformity and conformity upon the entire industry and the several states. Moreover, to "jump start" competition, the Order mandates the use of pricing principles and interim cost proxies that will render ILECs unable to recover the actual costs of providing access to their networks and services to the new entrants.[6]

While GTE supported the adoption of the 1996 Act and the advent of competition in the local exchange market, the *First Interconnection Order* strays far from the principles embodied in the legislation. Accordingly, GTE and others sought and obtained a judicial stay of the pricing rules. As the Commission knows, the U.S. Court of Appeals held that there was a substantial likelihood that significant portions of the *First Interconnection Order* would be reversed on the merits and that the pricing rules did not appear to allow ILECs to recover their costs. These legal issues, of course, will be definitively resolved when the case is heard and decided on its full merits.

This is not to say that competition is not moving forward in our nation's local exchange telecommunications markets. Despite GTE's strenuous disagreement with

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[6] *First Interconnection Order* at ¶¶ 618-819.

many of the fundamental holdings of the *First Interconnection Order*, it remains committed to making competition work.[7] GTE telephone companies are negotiating agreements in good faith according to the principles of the 1996 Act and the *First Interconnection Order* to the extent that it has not been stayed by the court.[8] These efforts have led to 19 signed agreements with competing, facilities-based local service providers. Where negotiated resolutions have not been possible, GTE telephone companies are actively involved in arbitration proceedings being conducted by state commissions pursuant to Sections 251 and 252 of the Communications Act. Over three dozen of these arbitrations will be concluded by years' end.[9]

B. Petitions Filed By AT&T, MCI and Several CLECs Provide No Basis For Reconsideration While Seeking To Move The Commission Into Even More Legally Questionable Actions.

Notwithstanding the Order's highly favorable provisions for new entrants, AT&T, MCI and several CLECs have filed petitions for reconsideration asking the FCC to slant the competitive playing field even more steeply in their direction. Rather than promoting deregulation and competition, these parties would erect new regulatory barriers to competition and further remove incentives for investment, all in the interest

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[7] *See* GTE Universal Service proposal filed in CC Docket No. 96-45. GTE Comments (April 12, 1996).

[8] The court stayed only the pricing and the "pick and choose" rules. *Iowa Stay*, slip op. at 8.

[9] Arbitrations are ongoing with the largest interexchange carriers, CLECs and cable companies.

of their own profit, not the public interest. Specifically, these parties argue that they should be able to obtain lower rates for interconnection, collocation and unbundled network elements and greater wholesale discounts for resold services than the *First Interconnection Order* mandated. They demand that the FCC order further unbundling of ILEC networks. They also ask the Commission to place greater restrictions on ILECs' legitimate business practices, thereby stifling competition.

In general, all of these reconsideration proposals were previously considered and rejected by the Commission. Nothing new is offered by the petitioners to substantiate the need for reversing the agency's past determinations. Indeed, as detailed below, the facts, the law and the public interest all dictate denial of their requests.[10]

II. PETITIONS SEEKING MORE EXPANSIVE FEDERAL PRICING RULES SHOULD BE SUMMARILY REJECTED

AT&T, MCI and other CLECs request the FCC to adopt a number of changes to the *First Interconnection Order's* pricing rules that include the following:

- using the Hatfield model to determine costs;
- limiting an ILEC from imposing non-recurring changes for the upfront costs of unbundling network elements and preparing to provide interconnection;
- requiring operations support systems costs to be recovered in rates for other unbundled network elements;

[10] As indicated in Sections VI and VII, *infra*, GTE supports the electric utilities' requests that the Commission eliminate some of the onerous pole attachment rules it adopted and Kalida Telephone Company's petition on one-way paging competition issues.

- increasing the wholesale discount for resale rates; and
- disallowing shared costs and profits in transport and termination rates.

As detailed below, these proposals are neither legally permissible nor good public policy. Any new forays into national pricing standards would be extremely imprudent in light of the U.S. Court of Appeals stay order, and the proposed pricing standards are little more than blatant attempts by the petitioners to obtain artificial subsidies for their businesses at the expense of ILECs and their ratepayers. Consequently, the Commission should summarily reject such requests.

A. The Petitioners' Pricing Proposals Ignore Statutory And Constitutional Limits On The FCC's Authority And Seek An Artificial And Anticompetitive Subsidy Of Their Market Entry.

1. The FCC Has No Jurisdiction To Consider or Adopt the IXC and CLEC Petitions.

As a threshold matter, the Court of Appeals for the Eighth Circuit stayed the Commission's pricing rules adopted in the *First Interconnection Order*. The stay order found that there was a substantial likelihood that the Commission lacked jurisdiction to establish national pricing rules and proxies.[11] In light of this stay and pending appeals, the FCC does not have authority to consider the petitioners' proposals for

[11] *Iowa Stay*, slip op. at 13-16.

additional pricing rules without court approval. Exclusive jurisdiction over these issues now lies with the federal appellate court.[12]

Even assuming the Commission could consider the requests, it has no authority to establish national pricing standards. As the U.S. Court of Appeals concluded, there is a likelihood that national pricing standards exceed the FCC's statutory authority. Sections 251 and 252(a) of the Communications Act leave pricing of interconnection, collocation, network elements and resale to private negotiations between interconnecting parties. If they cannot agree, Section 252(b) provides that one of the parties may request a state to determine prices pursuant to a state arbitration proceeding. Agreements adopted through negotiation or arbitration are then submitted to the state commission for approval.[13] An aggrieved party may appeal that state's decision to federal district court, not the FCC.[14] The FCC simply has no authority

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[12] 28 U.S.C. § 2349; Greater Boston Television Corp. v. FCC, 463 F.2d 268, 283 (D.C. Cir. 1971).

[13] 47 U.S.C. § 252(e).

[14] *Id.*, § 252(e)(6). GTE also respectfully disagrees with the FCC's conclusion in the *First Interconnection Order* that parties may challenge a state arbitration decision under Section 251 by filing a petition for declaratory ruling or complaint with the FCC. *See First Interconnection Order* at ¶¶ 124-28. It will rarely be appropriate for the federal district court acting on an appeal of a state-approved interconnection agreement to refer issues to the FCC under the doctrine of primary jurisdiction because interconnection pricing issues are not matters that have been "placed squarely in the hands of the [agency]." Consolidated Rail Corp. v. National Ass'n of Recycling Industries, 449 U.S. 609, 612 (1981); In re Long Distance Telecommunications Litigation, 831 F.2d 627, 631 (6th Cir. 1987). Nevertheless, these matters are on appeal, and, therefore, GTE is not asking the agency to rule on them.

under this statutory framework to set national prices or default proxies or to adopt the additional pricing policies advocated by these parties.

2. The CLECs' Pricing Proposals Violate the 1996 Act and the Constitutional Prohibition Against Takings.

As a separate matter, the petitioners' pricing proposals would not allow ILECs to recover their actual costs.[15] Accordingly, adoption of policies based on the CLECs' hypothetical cost modeling would violate the pricing standards contained in Section 252(d) of the Communications Act. Section 252(d)(1) requires that pricing for interconnection and unbundled network elements (1) be based on the ILEC's cost of providing such interconnection or unbundled elements plus a reasonable profit and (2) be just and reasonable. This "just and reasonable" language is identical to Section 201(b)'s requirement that common carriers charge just and reasonable rates. The courts have always interpreted this term to require that a carrier's actual costs be used to determine whether rates are reasonable.[16] Section 252(d)(1)'s pricing standard prohibits the FCC and any regulatory body from mandating that hypothetical costs form the basis for interconnection, collocation or network element prices or that ILECs not be permitted to recover all of their actual costs.

For this same reason, the FCC may not exclude theoretically "avoidable" costs in establishing resale prices. Doing so would violate Section 252(d)(3)'s requirement

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[15] *See* Section II.B., *supra*.

[16] *See, e.g.*, FCC v. Hope Natural Gas, 320 U.S. 591 (1944).

that only actually *avoided* costs be used to determine resale prices. The legislative history of this subsection reinforces the plain language of the statute: "The wholesale rate for resold telecommunications services under new Section 251(c)(4) is to be determined by the State commission on the basis of the retail rate charged to subscribers of such telecommunications services, excluding costs that *will be avoided* by the incumbent carrier."[17]

In view of the foregoing, these proposed pricing rules also give rise to constitutional infirmities. The Fifth Amendment to the Constitution prohibits government action that requires private parties to utilize their property for public use, but only permits the owner to recover an inadequate fee.[18] Therefore, both statutory and constitutional considerations preclude adoption of the CLECs' proposed pricing rules.

B. The Specific New Pricing Rules Proposed By AT&T, MCI And CLECs Would Prevent ILECs From Recovering Legitimately Incurred Costs And Otherwise Violate The 1996 Act.

The AT&T, MCI and CLECs' proposed rules are based on a hypothetical network and cost structure that simply does not exist in the real world. The CLECs' additional pricing rules should be recognized for what they are: an artificial attempt to reduce interconnection prices, regardless of whether consumers will be better off from

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[17] Conf. Rep. at 126 (emphasis added).

[18] *See* Duquesne Light Co. & Penn. Power Co. v. Barasch, 488 U.S. 299, 310 (1989).

competitive entry in these circumstances. Their proposals constitute a transparent effort to get the FCC to order ILEC investors and ratepayers to underwrite the entry of others into the local exchange market.

Traditional economic wisdom holds that consumers will benefit from competitive entry only when the new entrant can recoup the true costs of entering a market, not when an entrant relies on an artificial subsidy provided by the existing competitor.[19] Subsidized competitive entry is harmful because it encourages wasteful investment by new entrants. In addition, uneconomic entry injures existing consumers, who would have to pay higher rates in order for the ILEC to recover the remainder of the costs not directly recovered from the new entrant. Therefore, the Commission should not expand further on the *First Interconnection Order's* pricing rules.

1. The Hatfield Model underestimates ILEC costs because it is not based on actual ILEC networks or planning.

In the *First Interconnection Order*, the Commission concluded that the Hatfield model cannot be relied on in its current form to determine prices of unbundled elements.[20] MCI, standing alone, now asks the Commission to reverse this decision. However, MCI raises no arguments here that were not fully set forth and thoroughly refuted during the initial round of comments in this proceeding.

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[19] *See, e.g.*, BellSouth Phase I Comments, Appendix at 14-15 (Statement of Strategic Policy Research); US West Phase I Comments, Exhibit A at 24-26 (Statement of Robert G. Harris & Dennis A. Yao).

[20] *First Interconnection Order* at ¶ 794.

As GTE and others demonstrated in the prior rulemaking record, the Hatfield model is unverifiable in its content and fatally flawed in its outputs. Current and former National Association of Regulatory Utility Commissioners staff members have concluded that Hatfield's results "deviate so greatly from actual costs that the model can't be taken seriously at this time without detrimental effects on the current providers of telephone services."[21] Evaluating the usefulness of the model becomes doubly difficult since new versions of the model continue to be generated, the most recent of which was released on August 26, 1996.[22] Indications are already being given that a further revised version will be released soon.[23] The model's numerous deficiencies have been more completely documented in the *Universal Service* proceeding.[24]

One of the most significant problems is that the model is a black box, which does not permit anyone to inspect fully its component parts in order to evaluate the assumptions and dollar figures that underlie its conclusions. The "model" is actually a spreadsheet containing over a million fields, only about 400 of which may be modified

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[21] J. Shifman & R. Choura, "Universal Service Existing Proxy Models: What Can They Be Used For?" at 15 (submitted to Biennial Regulatory Information Conference at NRRI, September 1996) ("Shifman & Choura") (*See* Appendix A at A-18).

[22] Hatfield Model 2.2, Version 2.

[23] Testimony of Robert E. Mercer, Hatfield & Associates, Deposition, Docket Nos. 16300 & 16355, Tr. at 24-33 (Texas Pub. Util. Comm., October 24, 1996) ("Mercer, Texas") (*See* Appendix B at B-25).

[24] W. Taylor, National Economic Research Associates, "Not the Real McCoy: A Compendium of Problems with the Hatfield Model," filed in CC Docket No. 96-45 (October 16, 1996).

to take into account specific facts of individual ILECs.[25] No one has ever produced any written documentation of the Hatfield model,[26] so many of the assumptions, formulas and source for the underlying data contained in this spreadsheet remain a mystery to this day. Many of its individual calculations are password-protected so that outside parties cannot inspect and analyze it. Even MCI has recognized the difficulties of partially revealed cost modeling when the shoe is on the other foot. In the *ONA Investigation*, MCI itself complained when it could not evaluate a cost model whose algorithms and underlying assumptions were not publicly revealed.[27]

The model also uses entirely hypothetical cost inputs which ignore actual ILEC costs. As documented before the FCC and state PUCs, many of these assumptions are so plainly in error that the Hatfield model is wholly useless.

- The model has never been validated either internally or externally to determine whether it accurately reflects real world network costs or configurations, a defect admitted by Hatfield model developers.[28]

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[25] Testimony of Don J. Wood, Consultant for MCI, Deposition, Docket Nos. 960847-TP & 960980-TP, Tr. at 1675 (Florida Pub. Serv. Comm., September 13, 1996) ("Wood, Florida") (*See* Appendix C at C-3).

[26] In fact, Hatfield & Associates does not even have any internal workpapers to back up the equations contained in the spreadsheet. Mercer, Texas Tr. at 63-64, App. B at B-6.

[27] Commission Requirements for Cost Support Material To Be Filed With Open Network Architecture Access Tariffs, 7 FCC Rcd. 1526, 1528 (1992). There, the Commission ordered disclosure of much of the underlying data pursuant to confidentiality agreements. *Id.* at 1532-37.

[28] Testimony of Daniel Kelley, Hatfield & Associates, Docket No. 96-0329, Tr. at 560 (Hawaii Pub. Util. Comm., October 17, 1996) ("Kelley, Hawaii") (*See* Appendix D at D-2).

- The model fails to produce expected results when inputs are varied, e.g., increasing switch costs made the loop costs decline.[29] No explanation is given for these illogical outcomes.

- Hatfield assumes unreasonably high "fill factors" in evaluating the number of transmission facilities that should comprise its hypothetical network, which effectively prohibits an ILEC from recovering the costs of actual transmission facilities that currently have capacity to handle future growth in network usage.[30]

- The model fails to account for the effects of competition on cost of capital.[31]

- The model fails to account adequately for joint and common costs, which a firm must be able to recover if it is going to be able to stay in business.[32]

- Hatfield fails to assign all customers to the appropriate census block group.[33] This is partly the case because the model does not take into account topographical characteristics of actual geographic regions, but rather simply assigns customers to the nearest wire center.[34]

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[29] Testimony of Larry Cole, GTE Laboratories, CC Docket 96-0329, Tr. at 587 (Hawaii Pub. Util. Comm., October 17, 1996) (*See* Appendix D at D-7); *see also* Testimony of Gregory M. Duncan, NERA, Application No. 96-08-04, Tr. at 866-71 (California Pub. Util. Comm., September 25, 1996) (*See* Appendix E at E-3-8).

[30] Shifman & Choura at 24, App. A at A-27.

[31] Testimony of Robert E. Mercer, Hatfield & Associates, Application No. 96-08-04, Tr. at 868 (California Pub. Util. Comm., September 25, 1996), App. E at E-5.

[32] *See* GTE Phase I Comments at 61-63; USTA Phase I Comments at 39. The Commission has recognized that joint and common costs must be recovered. *First Interconnection Order* at ¶¶ 694-698.

[33] Revised Proposed Decision, R.95-01-020, I. 95-01-021 at 115 (ALJ Wong, California Pub. Util. Comm., mailed October 9, 1996) (*See* Appendix F at F-2).

[34] Kelley, Hawaii Tr. at 567-68, App. D at D-3.

- The model relies on untested cost of capital information that was actually created by MCI, and not based on ILEC data.[35]

- Hatfield does not reflect individual cost variations among different systems, e.g., the model does not take into account local variations in the relative amount of aerial vs. buried cable.[36]

- Many of the underlying assumptions and equations in the model cannot be modified to take into account actual company facts.[37]

- Many of the assumptions are clearly biased to produce smaller cost outputs than are appropriate, e.g., the model includes only 33 percent of future trenching costs because it assumes that an ILEC will always share costs of digging trenches with two other utilities.[38]

- It arbitrarily assumes that network operations expenses will be only 70 percent of 1995 levels, without any explanation or basis in fact.[39]

For these reasons, the Hatfield model should be firmly and finally rejected.

2. ILECs are entitled to recover their non-recurring implementation and provisioning costs.

The *First Interconnection Order* repeatedly reaffirmed that ILECs are entitled to recover the full costs of modifying their networks to provide interconnection, collocation and unbundled network elements, as well as other one-time costs associated

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[35] *Id.* at 569, App. D at D-5; Shifman & Choura at 24, App. A at A-27.

[36] Kelley, Hawaii Tr. at 568, App. D at D-4; Wood, Florida Tr. at 1707, 1715, App. C at C-4-5.

[37] Mercer, Texas Tr. at 63-66, App. B at B-6-7.

[38] *Id.* at 82-84, App. B at B-8. The staff of the Florida Public Service Commission estimated that this defect understated the cost of a loop by $ 3.90 per month. Wood, Florida Tr. at 1755-58, App. C at C-6-9.

[39] Wood, Florida Tr. at 1758, App. C at C-9.

with interconnections and with a higher quality of service. In this regard, the *First Interconnection Order* stated that, "of course, a requesting carrier that wishes a 'technically feasible' but expensive interconnection would be required, pursuant to section 252(d)(1), to bear the cost of that interconnection, including a reasonable profit."[40] The Order went on to conclude: "A carrier purchasing unbundled elements must pay for the cost of that facility . . . ."[41] In contrast to other pricing areas, the Commission properly decided not to promulgate detailed rules restricting an ILEC's ability to recover these costs. Instead, the FCC left it to the states to determine the appropriate way that upfront non-recurring costs should be recovered if negotiating parties are unable to agree on a cost recovery mechanism.[42] Significantly, the Commission allowed states to permit an ILEC to recover all non-recurring costs in upfront non-recurring charges.[43]

In these respects, the *First Interconnection Order* is consistent with precedent and communications industry practice. Regulatory agencies at the state and federal levels usually leave the recovery of non-recurring costs to the discretion of telephone companies, subject only to general oversight to ensure that upfront charges are fairly

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[40] *First Interconnection Order* at ¶ 199.

[41] *Id.* at ¶ 334. *See, id.* at ¶¶ 209, 244 n.520, 382.

[42] *Id.* at ¶ 749.

[43] *Id.*